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EXAMINER

OGDEN JR, NECHOLUS

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1796

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/559,588
Filing Date: December 02, 2005
Appellant(s): MISTRY, NIRAJ DHANSUKHLAL

Alan Bornstein
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 31, 2010 appealing from the Office action mailed October 26, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1, 3-4, 6-10.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

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subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 1, 3-4, 6-10 rejected under 35 U.S.C. § 102 (b) as anticipated by or in the alternative § 103 (a) as being obvious over GB 2005297.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

1,190,023

GREAT BRITIAN

4-1970

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1, 3-4, 6-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB (1,190,023) hereinafter GB '023.

2. GB '023 discloses clear liquid biodegradable detergent from 0 degrees Celsius to room temperature (page 7, lines 16-20) composition comprising a) up to 50% by weight of an alkali metal soap of at least one unsaturated fatty acids soap having from 14-22 carbon atoms and mixtures of at least one such unsaturated fatty acid having from 8-22 carbon atoms which encompasses the castor oil soap or ricinoleic soap of 18 carbons; b) a solvent consisting of water and lower saturated monohydric alcohol; c) up to 15% by weight of one or more organic fluidifying agents such as glycerol or polyethylene glycols (page 1, lines 1-30). Furthermore, the liquid detergent composition may also include emulsifying agents, sequestering agents, and/or dispersing agents, optical bleach and perfumes (page 1, lines 54-56). Moreover, illustrative of the

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dispersing agents include nonionic surfactants such as phenol esters and alkali metal sulphorcinates (page 1, lines 73-82). Example 5, teaches unsaturated potassium fatty acid soaps glycerol and ethoxylated phenols.

3. As this reference teaches all of the instantly required it is considered anticipatory.

4. In the alternative, GB '023 is silent with respect to the percentage of unsaturated castor oil or ricinoleic fatty acid in said soap component, however, GB '023 specifically teaches up to 50% by weight of unsaturated fatty acid soaps having 14-22 carbons and mixtures of at least one C8-C22 unsaturated fatty acid. Therefore, GB '023 encompasses the castor oil or ricinoleic fatty acids carbon chain length of 18 and minor amounts of lower carbon atoms in addition to overlapping the percentages of 0.05 to 4% by weight.

(10) Response to Argument

5. Appellant argues that a prima facie case of obviousness has not been made because GB '023 does not teach castor oil or ricinoleic unsaturated fatty acid soaps in their specific concentration range of 0.05 to 4.0%.

6. The examiner contends and respectfully disagrees and directs appellant's attention above. Specifically, GB '023 teaches unsaturated fatty acid soaps in amounts from 0 to 50%, which includes amounts 0.05 to 4.0% and further includes carbon atoms of C14-22 and C8-22, which overlaps with castor oil or ricinoleic fatty acids of C18. Accordingly, the skilled artisan would be able to envision the specific fatty acid soap of castor oil fatty acids in the amounts claimed because GB '023 specifically teaches them with sufficient specificity.

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When the species is clearly named, the species claim is anticipated no matter how many other species are additionally named. Ex parte A, 17 USPQ2d 1716 (Bd. Pat. App. & Inter. 1990) See also In re Sivaramakrishnan, 673 F.2d 1383, 213USPQ 441 (CCPA 1982).

Appellant argues that the specification and Tables 2 and 3 specifically teach that the addition of castor oil increases transparency of soap unexpectedly.

The examiner contends that the Tables are given little patentable weight because the argument with respect to transparency has already been settled since GB'023 teaches with sufficient specificity a “**clear**” composition (page 7, lines 16-20) and further exemplify clear compositions with other non-castor oil or ricinoleic fatty acid soap derivatives. In other words, nothing unexpected is seen by Tables 2 and 3 by incorporating castor oil soap to produce transparent soaps. Accordingly, one of ordinary skill in the art would have selected a fatty acid soap of C8-18 carbon atoms and mixtures thereof to comprise a clear liquid detergent composition as claimed in view of the teachings disclosed in GB '023.

An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See KSR Int'l Co. v. Teleflex Inc., 550 U.S. ___, 2007 WL 1237837, at *12 (2007) (“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

With respect to appellant's argument that the examples are commensurate in scope with the claimed invention, the examiner concedes that certain showings are commensurate in scope with the claimed invention. However, appellants have not overcome the statutory bar of anticipation. Furthermore, GB '023 clearly teaches with

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sufficient specificity, a mixture of unsaturated fatty acid soaps having C18 carbon atoms within the claimed proportions; the specific humectants of glycerol or polyethylene glycol; and that said compositions are clear within a temperature range of 0 to 25 degrees Celsius. Therefore, the claims are clearly anticipated.

With respect to appellant's Tables within his specification, nothing unexpected is seen nor is criticality established. GB '023 clearly teaches, in his examples, mixtures of fatty acids soaps including ricinoleic acid, appellant's specific humectants, non-soap surfactants all within a clear liquid composition that is stable and clear within a temperature range of from 0 to average room temperature (page 5, lines 1-5).

Therefore, one of ordinary skill in the art would expect compositions taught by GB '023 having C8-C18 fatty acid soap mixtures with glycerol, non-soap surfactants to have similar characteristics as those exemplified, absent a showing of unexpected results. Appellant's have not proffered a side by side comparison of the closest prior art of record against the claimed invention commensurate in scope. Accordingly, criticality has not been established and the claims remain anticipated by GB '023.

Appellant's conclusion states that the instantly claimed invention allegedly gives "superior" transparency, however, nothing in the claims calls out any levels of transparency. GB '023 clearly teaches clear liquid soaps in the defined temperature range and specifically teaches with sufficient specificity the C18 fatty acid soap and mixtures of soaps, and the glycerol humectants. Accordingly, the claims are remain rejected for reasons disclosed herein.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Necholus Ogden, Jr./

Conferees:

/Harold Y Pyon/

Supervisory Patent Examiner, Art Unit 1796

/Benjamin L. Utech/

Primary Examiner